No. 2506

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

HARRISON H. KEENE,
Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

FRANK McGOWAN,
MARSHALL B. WOODWORTH,
Attorneys for Plaintiff in Error.

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FRANK D. MONCKTON, Clerk.

By.....Deputy Clerk.

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Statement of the Case.

The plaintiff in error, Harrison H. Keene, was indicted and convicted in the District Court of the United States, in and for the Northern District of California, for a violation of the act of Congress of June 25, 1910 (36 Stat. 825), designated, in Section 8 of the Act, as the "White-slave traffic Act".

The indictment contained two counts. The plaintiff in error was convicted on the first count and acquitted on the second count of the indictment. He was sentenced to be imprisoned for the term of one year in the Alameda County Jail, Alameda

County, California. He prosecutes this writ of error from the judgment of conviction. A motion in arrest of judgment was interposed, which was decided. The assignments of errors raise two questions with reference to the conviction of the plaintiff in error on the first count of the indictment, he having been acquitted on the second count. They are as follows:

First. That the "White-slave traffic Act" is unconstitutional;

Second. That the allegations contained in the first count of the indictment, upon which alone plaintiff in error was convicted, assuming them to be true, do not constitute such an offense as was intended by Congress to be prosecuted by virtue of the Act known as the "White-slave traffic Act".

The first count of the indictment charged that the plaintiff in error, on May 3, 1913,

> "did unlawfully, wilfully, knowingly and feloniously procure and obtain, and cause to be procured and obtained, and aid and assist in procuring and obtaining transportation on a steamship known as and named the 'Alliance', a steamship owned by the North Pacific Steamship Company, a corporation, on board the said steamship 'Alliance' so belonging to the said steamship company, at the City of Eureka, County of Humboldt, State and Northern District of California, for passage between the said City of Eureka, County of Humboldt, State and Northern District of California and the City of Portland, in the State of Oregon; that the said steamship 'Alliance' is operated between the said points, to wit: the City of

> Eureka, California, and the City of Portland, Oregon, aforesaid, and the said transportation was procured and obtained to be used by a certain woman, to wit, one Myrtle Kellett, in travelling on said line between the said State of California and the said State of Oregon, in interstate commerce, whereby said woman was then and there transported in interstate commerce, to wit, from Eureka, California, to Portland, Oregon, on board the said steamship 'Alliance' so owned and operated by the North Pacific Steamship Company, with the intent and purpose on the part of the said defendant that said woman should engage in the practice of debauchery and for other immoral purposes, to wit, that she should live and cohabit with him, the said defendant, in Portland, Oregon, as his concubine."

The second count charged the plaintiff in error with having persuaded, induced and enticed, and caused to be persuaded, induced and enticed, and aided and assisted in persuading, inducing and enticing one Myrtle Kellett to go from said City of Eureka, in the State and Northern District of California, to Portland, in the State of Oregon, in interstate commerce, by water over the line of the North Pacific Steamship Company, to wit, on board the steamship 'Alliance', for the purpose of debauchery, and for an immoral purpose, to wit, that she, the said Myrtle Kellett, should be and become the concubine and mistress of the said defendant.

As stated, plaintiff in error was acquitted upon the charge that he had persuaded or induced or

enticed Myrtle Kellett to go from Eureka, California, to Portland, Oregon, for the purpose alleged in the second count of the indictment.

The argument, made on behalf of plaintiff in error, is, therefore, limited to a consideration of the allegations of the first count of the indictment.

I.

Argument.

THE ACT OF CONGRESS OF JUNE 25, 1910 (36 STAT. 825), DESIGNATED AS THE "WHITE SLAVE TRAFFIC ACT", IS UNCONSTITUTIONAL.

This point is raised on the motion in arrest of judgment.

(Assignments of Error Nos. I-IX incl.; Transcript of Record, pp. 16-18.)

We presume again to advance this contention and to save the point, although we are aware that the Supreme Court of the United States has decided, as applied to the circumstances in the cases that have come before the Court, that the "White-slave traffic Act" is constitutional.

Hoke v. United States, 227 U. S. 308;
Athanasaw v. United States, 227 U. S. p. 326;
Bennett v. United States, 227 U. S. p. 333;
Harris v. United States, 227 U. S. 340.

We will not attempt, in view of the decisions of the Supreme Court of the United States, upholding

the constitutionality of the "White-slave traffic Act", to do more than to state the points on which we rely in support of our contention that the "White-slave traffic Act" is unconstitutional and infringes on the police power of the states.

The "White-slave traffic Act" is claimed to derive its constitutional sanction from Subdivision 3, of Section 8, of Article I of the Constitution of the United States, which provides that Congress shall have power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes".

We contend that "persons" are not subjects of commerce.

New York v. Miln, 11 Peters, 102;
License Cases, 5 How. p. 599;
Bowman v. Chicago & C. R. Co., 125 U. S. 489.

Congress has no power or authority to punish prostitution within the states.

Congress has no authority to legislate or to make a criminal act anything which may be done in a sovereign state by any person.

The only power Congress has over any person is while such person is "in transitu".

Lemon v. The People, 26 Barb., (N. Y.) 270; aff. in 20 N. Y. 562.

Congress has not prohibited prostitutes from traveling.

The Supreme Court of the United States has repeatedly declared that commerce among the several states shall be "free and untrammelled".

Welton v. State of Missouri, 91 U. S. 275;
Hall v. DeCuir, 95 U. S. 485;
Weber v. Virginia, 103 U. S. 344;
Passenger Cases, 7 Howard, 283;
King et al. v. American Transportation Co., 14 Fed. Cases, 512;
Boyse v. Anderson, 2 Pet. 150.

Without further elaborating on this contention, we respectfully submit that the "White-slave traffic Act" is unconstitutional and infringes on the police power of the states.

II.

THE ALLEGATIONS CONTAINED IN THE FIRST COUNT OF THE INDICTMENT, UPON WHICH ALONE PLAINTIFF IN ERROR WAS CONVICTED, ASSUMING THEM TO BE TRUE, DO NOT CONSTITUTE SUCH AN OFFENCE AS WAS INTENDED BY CONGRESS TO BE PROSECUTED BY VIRTUE OF THE ACT KNOWN AS THE "WHITE SLAVE TRAFFIC ACT".

This question is raised by Assignments of Error Nos. I, II, III, IV, V, VI, VII, VIII, IX; (see motion in Arrest of Judgment; Transcript of Record, pp. 13-14; pp. 15-18).

These Assignments of Errors distinctly raise the proposition that acts of immorality, such as are alleged in the first count of the indictment upon

which the plaintiff in error was convicted, are not within the letter or spirit of the "White-slave traffic Act".

This is, confessedly, not a case of commercialized vice. The first count of the indictment, upon which the plaintiff in error was convicted, does not allege facts of commercialism in the transportation of Myrtle Kellett, or that the plaintiff in error expected or intended to profit financially thereby. It does not charge that he is a "white-slaver". It does not set forth any facts which place him in the category of a "white-slaver". Myrtle Kellett is not alleged to have been the victim of a "white-slaver", or of a "white-slave plot". It is merely charged that the purpose of the plaintiff in error, in the transportation, was that the "said woman should engage in the practice of debauchery and for other immoral purposes, to wit, that she should live and cohabit with him, the said defendant, in Portland, Oregon, as his concubine". (Transcript of Record, p. 3.) There was not the slightest pretense, on the part of the prosecution, that the purpose of the plaintiff in error savored in the slightest degree of commercialism or that his conduct, in connection with the transportation of Myrtle Kellett was anything more than an escapade or elopement. There was not the slightest pretense, from anything averred in the first count of the indictment or anything else contained in the transcript of record, that, in all her actions, Myrtle Kellett did not act willingly and of her own free

will and accord. The whole theory of the charge contained in the first count of the indictment and of the case of the Government was that although she may have consented, and even begged, to go, or may have induced the plaintiff in error to go, still he is guilty from the mere fact that he went with her and paid for her transportation.

We are, therefore, brought to the threshold of the second proposition advanced in this opening brief, and that is that, as the facts averred in the first count of the indictment, upon which alone the plaintiff in error was convicted, do not make out a case of commercialized vice or of "white-slavery", or that the plaintiff in error profited financially, or intended or expected to profit financially, or share in any profit ensuing, or arising, or expected to arise, from the transportation of Myrtle Kellett and because of any subsequent immoral act or conduct on her part, *there can be no violation of the "White-slave traffic Act"*. In other words, we contend that the "White-slave traffic Act" was intended by Congress to apply only to cases of commercialized vice or of "white-slavery", and not to "des affaires-de-coeur", or escapades such as are alleged in the first count of the indictment and disclosed in the case at bar.

In support of this contention, which we do not understand to have been directly decided in any previous case either in the Supreme Court or the Circuit Court of Appeals, it will be necessary to examine closely the provisions of the "White-slave

traffic Act'' and to refer, briefly as possible, to the history of its enactment and the debates of Congress with reference thereto.

The plaintiff in error respectfully contends that the "White-slave traffic Act", *as construed by the trial Court, is unconstitutional;* and he further contends that the *facts disclosed by the allegations of the first count of the indictment could not in any event constitute a crime under the said Act.*

In stating these points for argument and elucidation, we are not unmindful of the rulings of the United States Supreme Court in the cases of Athanasaw v. U. S., 277 U. S. 326; Hoke v. U. S., 227 U. S. 308; U. S. v. Bitty, 208 U. S. 393; nor the several other federal cases construing the Act and reported in the Federal Reporter.

We ask the indulgence of the Court, if we revert to elementary rules of construction and interpretation; but the gravity of the case compels us to present the argument in as clear a light as possible that no injustice may be done the accused.

The Courts will take judicial notice that the traffic in girls and women as prostitutes for gain is a species of illicit commerce. This traffic reached such alarming proportions and became such a menace to society generally that it became necessary for the governments of the world to take formal steps to suppress it. To that end, a conference of nations was called and held in Paris. As a result of that conference the different nations represented,

upon July 25, 1902, entered into "an agreement or project of arrangement for the suppression of the white-slave traffic, * * * for submission to their respective governments." This agreement was made public within the United States, by proclamation of the President, upon June 18, 1908.

35 U. S. Stat. at Large, pt. 2, pages 1979-1984.

For the purpose of carrying out the terms of that international agreement, the "White-slave traffic Act" was passed. It was approved June 25, 1910.

36 U. S. Stat. at Large, 825.

The Courts will further take judicial notice of the illicit traffic as condemned, exposed and generally commented upon in the daily press, magazine articles and books; also as depicted in theatrical plays and moving picture-shows generally immediately preceding and contemporaneous with the passage of the Act.

From these different sources and from general public and private discussions, the terms "white-slave", "white-slaver", and "white-slave-traffic" have now each received a definite meaning in the English language, of which, again, the Courts will take judicial notice.

The Funk & Wagnalls New Standard Dictionary of the English language (New York & London, 1913) thus defines "white-slave":

> (Title "slave") "a girl *sold into captivity.*" "White slavery", under the title "slavery", is thus defined by quotation: "White slavery, as popularly understood, is that condition to which young and innocent girls are debased when *sold into captivity* for immoral purposes.
>
> "Judge Thomas T. C. Crain in General Sessions, New York, May 26, 1910."

Judge Russell, in U. S. v. Hoke, 187 Fed. 992, on page 1002, makes use of the term "white-slaver" in the following sentence:

> "If a state when considering legislation for the suppression of prostitution within its own limits may properly take into view the evils that inhere in that degrading vice, why may not Congress, invested with the power to regulate commerce among the several states, provide that such commerce shall not be polluted by allowing the *white slaver* to transport women and girls from one state to another for the purpose of prostitution and debauchery?"

We thus clearly perceive that there was loud and popular call all over the civilized world for legislation to root out the evil. The popular demand resulted in the enactment by Congress of the Act of June 25, 1910, the Act under which the plaintiff in error was convicted.

Sedgwick on Statutory & Constitutional Law says:

> "On the other hand, there is no doubt that very eminent judges have, in the construction of statutes, been wont to permit their minds to be influenced, and in fact to take a sort of judicial cognizance of many intrinsic facts, in regard to which evidence certainly would not

have been permitted, and which, indeed, could not perhaps be proved.

The English statute, 26 Geo. 11, c. 23, declared all marriages of children under age void, unless the consent of the parents or guardians was first obtained. The question was brought before the Kings Bench, whether the act was to be interpreted to include illegitimate children; and Lord Mansfield, in holding that it did so, put his decision on the ground of the mischiefs which the act was intended to obviate: 'This act was passed in order to prevent the illegal practice of clandestine marriages, which were become so very enormous, that places were set apart in the Fleet and other prisons for the purpose of celebrating clandestine marriages. The Court of Chancery, on the ground of its illegality, made it a contempt of the court to marry one of its wards in this manner. They committed the offenders to prison; but that mode of punishment was found ridiculous and ineffectual. Then this act was introduced to remedy the mischief."

Sedgwick on Statutory & Constitutional Law, pages 241, 242.

Let us look at the Act.

Section 6 recites the Paris Agreement, the President's proclamation by which it was published to the people of the United States, and the designation of the Commissioner-General as the official in charge of the foreign branch of the traffic, and clearly relates to prostitution and debauchery as a business or commerce and not voluntary sexual intercourse free from any feature of profit or remuneration.

Section 8 classifies the whole Act under one subject and entitled it the "*White-slave traffic Act.*"

Sections 2, 3 and 4 define what acts shall be deemed crimes under the Act and provide penalties for their respective violations.

Sections 1 and 7 define words used in the Act; and Section 5 prescribes the venue for trials.

The true purpose and scope of the "White-slave traffic Act" is nowhere better stated than by Representative Mann of Illinois, the proponent of the "White-slave traffic Act", in submitting to Congress the report from the Committee on Interstate and Foreign Commerce in favor of the adoption of the bill then pending, which subsequently became the "White-slave traffic Act". We set out just such portions of this report as are apposite to this particular phase of our argument:

> "THE WHITE SLAVE TRADE:
>
> "A material portion of the legislation suggested and proposed is necessary to meet conditions which have arisen within the past few years. The legislation is needed to put a stop to a *villainous interstate and international traffic in women and girls.* The legislation is not needed or intended as an aid to the States in the exercise of their police powers in the suppression or regulation of immorality in general. *It does not attempt to regulate the practice of voluntary prostitution,* but aims *solely to prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution.*
>
> The evil, as a present day existing evil of widespread dimensions which has arisen, has been given careful attention by the representatives of most of the civilized nations of the

world, and has been made the subject of an international agreement. Thousands of public-spirited citizens have combined in various National and State organizations for the purpose of lending their aid in its suppression. The *white-slave trade* has been so prevalent that prosecuting officers, both State and Federal, even under inadequate and insufficient laws, have been able to secure many notable convictions. It is an *evil* which many State legislatures have attempted to regulate within the past two or three years by means of the enactment of State statutes. Inasmuch, however, as the *traffic* involves mainly the transportation of women and girls from the country districts to the centers of population and their importation from foreign nations, the evil is one which cannot be met comprehensively and effectively otherwise than by the enactment of Federal laws.

Investigations conducted by Government agents disclose the fact that a national and international *traffic exists in the buying, selling, and exploitation of women and young girls for immoral purposes.* This traffic has come to be known the world over as *'the white-slave trade'.* It is referred to by the Paris conference as *'the trade in white women'.*

There are few who really understand the true significance of the term 'White-slave trade'. Most of those who have given only a casual thought to the subject have the impression that women who lead immoral lives in public houses are there voluntarily, either because they are attracted by the excitement of such a life or because they have found it an easy way to earn a living. In many cases such is not the fact. The results of careful investigation into this subject disclose the fact that the inmates of many houses of ill-fame are made up largely of women and girls whose

original entry into a life of immorality was brought about by men who are in the *business of procuring women for that purpose—men whose sole means of livelihood is the money received from the sale and exploitation of women, who, by means of force and restraint, compel their victims to practice prostitution.* These investigations have disclosed the further fact that these women are practically *slaves* in the true sense of the word; that many of them are kept in houses of ill-fame against their will. and that *force, if necessary, is used to deprive them of their liberty.*

The characteristic which distinguishes *'the white-slave trade'* from *immorality in general* is that the women who are the *victims* of the *traffic* are *unwillingly forced to practice prostitution.* The term *'white slave'* includes *only* those women and girls who are *literally slaves* —those women who are *owned* and *held as property and chattels*—whose lives are lives of *involuntary servitude;* those who practice prostitution as a result of the activities of the *procurer,* and who, for a considerable period at least, continue to lead their degraded lives because of the power exercised over them by their *owners.* In short, the *white-slave trade* may be said to be the *business of securing white women and girls and of selling them outright, or of exploiting them for immoral purposes.* Its *victims* are those women and girls who, if given a fair chance, would, in all human probability, have been good wives and mothers and useful citizens.

The preamble of an existing international agreement on this subject states that the several governments, 'being desirous to assure to women who have attained their majority and are subjected to deception or constraint, as well as minor women and girls, an efficacious protection against the *criminal traffic known*

under the name of trade in white women (*'traite des blanches'*), have resolved to conclude an arrangement with a view to concert proper measures to attain this purpose.' It is the purpose of the proposed laws, in so far as it may be possible for Congress to do so, to protect women and girls against this *criminal traffic* by providing for the punishment of those engaged in that *traffic* and by regulations established by the act.

Extensive investigation by government commissions and prosecuting officers in various parts of the country disclose the fact that in many cases involving women and girls imported into this country, and those transported from one state to another, the *procurers resort to all of the means and devices known to the criminal classes to accomplish their purposes. Liquor, trickery, deceit, fraud, and the use of force are resorted to by the procurer to place the girl under his power.* In some cases those who have been induced to come to the large cities are first introduced to the house of prostitution under the influence of liquor; in others, the *procurer* enters into a pretended marriage with his victim; in many cases involving the importation of women and girls from abroad and their transportation from one state to another the inducement is the promise of legitimate employment with handsome compensation. *Hundreds of men in large cities live from the earnings of the victims of the white-slave trade,* and in many instances the more extensive of *international procurers live in affluence.* The books kept by a notorious *importer* of French girls, who was arrested in Chicago a few months ago, disclosed his earnings for the year previous to his arrest, largely from his *importation and wholly from his exploitation of girls,* to have been more than $102,000.

The investigation into this subject conclusively shows the fact that for some time after they are first unwillingly forced to take up a life of prostitution many of the victims would at once abandon it were it possible for them to do so. The facts are that in order to insure her continuance in the degraded life, to which she has been unwillingly forced to submit, the procurer has resort to physical violence and the maintenance of a system of surveillance which makes her, to all intents and purposes, *a prisoner.* Obviously the portions of the act which require the *proprietor of a house of ill-fame* to report to the Federal authorities concerning the arrival in the establishment of an alien woman or girl would, at least so far as concerns aliens, make *unlawful detention* practically impossible.

The national and international importance of suppressing this *criminal traffic* is clearly shown by reference to the treaty, the preamble of which is given above, and reports of governmental officers and others on the subject.

The Secretary of Commerce and Labor, in his annual report for 1908, page 18, refers to the matter in the following terms:

'It is highly necessary that this *diabolical traffic,* which has attained international proportions, should be dealt with in a manner adequate to compass its suppression. No punishment is too severe to inflict upon the procurer in this vile traffic.'

The act of February 20, 1907, (Sec. 29), created an immigration commission, the membership of which was to consist of three Senators, three members of the House of Representatives, and three persons to be appointed by the President of the United States. In a preliminary report submitted February 27, 1909 (Doc. 1489), the commission says:

'The commission has made an extensive investigation into the question of the importation and harboring of women for immoral purposes. The results show that many women are being regularly imported under conditions which often amount to *absolute slavery.*

* * * * * *

'It is believed that as a result of this investigation the commission will be able to make recommendations which will put a very decided check upon this horrible traffic, if, indeed, it will not practically break it up entirely.'

THE TRAFFIC IS SYSTEMATIC AND EXTENSIVE.

Governmental investigations which have been conducted disclose the fact that the importation of women and girls from foreign countries has been systematic and continuous, and has not been limited to isolated and accidental cases. The facts in connection with investigations conducted by the district attorney at Chicago may be taken as typical of the situation in many other cities.

At the time of the arrest of several notorious French importers in Chicago a large amount of correspondence and other documentary evidence fell into the hands of the authorities. This evidence showed beyond a reasonable doubt that there was in existence an *organized system,* or *syndicate,* having for its purpose the importation of women from foreign countries to Chicago, and other cities in the United States for immoral purposes. This syndicate had headquarters and distributing centers in New York, Chicago, Omaha, Denver, San Francisco, Los Angeles, Seattle, and Nome, Alaska.

It is conservatively estimated, from an examination of the data and information at hand, that the *syndicate* has imported annually during the preceding 8 or 10 years on an aver-

age of about 2000 women,—largely French. It also appears that the syndicate regularly sent agents to Europe to *procure girls* at stated prices, to be brought to the United States, where they were placed at the disposal of the keepers of houses of *prostitution.* The usual methods employed in evading the immigration officers at the port of entry was to pass the women as the wives or sisters of the procurers with whom they arrived.

One of the chief members of this syndicate was the Frenchman Alphonse Dufaur, who was the defendant in six indictments, in the Chicago district, charging him with harboring alien women in violation of the existing law. Dufaur and his wife subsequently forfeited bonds in the sum of $25,000 and became fugitives from justice.

Another active importer and procurer was Henry Lair, who operates establishments in Chicago and San Francisco. One of Lair's agents was a man named Louis Paint, who some time ago was convicted of importing in New York and who is now serving a sentence of four years in the penitentiary at Atlanta, Ga., for importing women for Lair. On the recent trial of Lair, in Chicago, Paint testified that he had been given $800 by Lair and told to go to Paris for the purpose of procuring two girls for Lair's establishment in Chicago. Lair was convicted and sentenced by Judge Landis to serve two years at hard labor in the penitentiary at Fort Leavenworth and to pay a fine of $2500.

Various arrests have been made in the Chicago district which disclose the existence of a *traffic in girls* from Hungary, Sweden, Norway, Denmark, Great Britain, and other countries.

In this connection it is of interest to note the *profits realized by those engaged in the im-*

portation of alien women for the purpose of prostitution. For this purpose the information in the possession of the Government, as the result of prosecution against the French procurer, Dufaur, which is definite and accurate, may be taken as typical of the remunerative character of the *traffic.* The books of account kept by Dufaur show that *his income,* from his *establishment in Chicago,* realized largely as a result of his success as an importer, was, for the 12 months immediately preceding his arrest, upward of $102,000. These books also show that during the month of May, previous to his arrest, the *earnings of one girl, a recent importation,* were $723. In almost every instance which has come to the attention of the authorities the girls who were imported from France by the *French syndicate* were compelled to turn over every day to the *proprietor of the establishment in which they were detained all their earnings.* They were usually allowed only enough to purchase the clothing necessary to make them attractive to frequenters of the place.

INTERNATIONAL AGREEMENT FOR THE REPRESSION OF THE TRADE IN WHITE WOMEN.

A project of arrangement for the *suppression of the white-slave traffic* was, on July 25, 1902, adopted for submission to their respective Governments by the delegates of various powers represented at the Paris conference for the repression of the *trade in white women.*

The stipulations of this project of arrangement were confirmed by preliminary agreement signed at Paris, May 18, 1904, by the Governments of Germany, Belgium, Denmark, Spain, France, Great Britain, Italy, the Netherlands, Portugal, Russia, Sweden, Norway, and the Swiss Federal Council.

By its resolution of March 1, 1905, the Senate of the United States advised and consented to the adhesion by the United States to the said project of arrangement, and therefore, on June 6, 1908, the President announced the adherence on the part of this Government to the project, and this adherence was on June 15, 1908, covered by the proclamation of the President. This treaty was published in pamphlet form by the State Department as Treaty Series, No. 496, and a complete copy is attached hereto as Appendix B. The preamble of this agreement recites that the various Governments, being desirous to assure to women who have attained their majority, and are subjected to deception or constraint, as well as minor women and girls, an efficacious protection against the *criminal traffic known under the name of trade in white women—'traite des blanches'*—have resolved to conclude an arrangement with a view to concert proper measures to attain this purpose." (See Congressional Record, Vol. 50, pp. 3368, 3370, 3371.)

Where the language of a statute is ambiguous or doubtful, it is well settled that resort may be had to the history of the act.

"Both the *debates,* however, and the *reports of committees* may be consulted for the purpose of ascertaining the *general object of the legislation proposed* and the *evils* sought to be *remedied.*"

36 Cyc., pp. 1138 and 1139, and cases there cited;

Holy Trinity Church v. U. S., 143 U. S. 457; 36 L. Ed. 226.

Even the *title* of the *Act* may be referred to as tending to throw light upon the legislative intent of its *scope or operation.*

Said Mr. Justice Brewer in Holy Trinity Church v. U. S. supra:

> "We find, therefore, that the *title of the Act,* the *evil which was intended to be remedied,* the *circumstances surrounding the appeal to Congress,* the *reports of the Committees of each House,* all concur in affirming that the intent of Congress was simply to stay the influx of this cheap unskilled labor."

To the same effect, see Binns v. U. S., 194 U. S. 486.

Coosaw Mining Co. v. So. Car., 144 U. S. 563.

In ascertaining the intent of a statute, especially the remarks of the member in charge of the bill, are important and of value.

Cyc., Vol. 36, pp. 1138, 1139;
U. S. v. Wilson, 58 Fed. 768;
Ex p. Farley, 40 Fed. 66.

The Act was passed by Congress under the grant of power contained in Art. 1, Sec. 8, subd. 3, of the Constitution,—known popularly as the "interstate commerce clause".

From what we have said, it will be apparent, without citation or argument, that the traffic in female human beings—the procuring, selling or using for financial profit—comes directly, and not by implication, within the meaning of the word "commerce" as used in the Constitution.

However, the trial Court, we respectfully submit, conceived a wrong impression of the nature and scope of the Act.

It is upon this that we predicate an assignment of error among several others on the same general subject.

A perusal of the Act will readily disclose where the Court obtained its erroneous conception.

The title of the Act is misleading. At first reading, one would readily conclude that the subject was "An Act to prohibit the *transportation* for immoral purposes of women and girls". Again, the first section would lead one to the same conclusion, wherein it says:

> "That the term 'interstate commerce' *shall include* transportation from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia."

The subject of the Act, however, as expressed in the title, is: "An Act to further regulate interstate and foreign *commerce*"; and the first section merely recites that the term "interstate" shall include state, territory and the District of Columbia. In other words, the Act is for the purpose of further regulating interstate and foreign *commerce,* and *not* an Act to regulate the *transportation* of women and girls for immoral purposes, as erroneously conceived by the trial Court.

Let us now elucidate by applying a few rules of construction and interpretation.

"Laws are expounded and enforced, not made, by the Courts. The makers are entitled to have their real meaning, if it can be ascertained, carried out. Hence the *primary object* of all rules for interpreting statutes is to ascertain the legislative intent; or, exactly, the meaning which the subject is authorized to understand the legislature intended. Hence, also, if the Courts can ascertain the legislative meaning, their duty is to give it effect, whatever may be the personal opinions of the incumbents of the bench on the policy of the law."

Bishop on Statutory Crimes, 3rd Ed., Sec. 70.

"It is indispensable to a correct understanding of a statute to enquire first what is the subject of it. When the subject matter is once clearly ascertained and its general intent, a key is found to all its intricacies; general words may be restrained to it, and those of a narrower import may be expanded to embrace it to effectuate that intent. When the intention can be collected from the statute, words may be modified, altered or supplied so as to obviate any repugnancy or inconsistency with such intention. * * * In the Eureka case, Mr. Justice Field said: 'Instances without number exist where the meaning of words in a statute has been enlarged or restricted and qualified to carry out the intention of the legislature. The enquiry, where any uncertainty exists, always is as to *what the legislature intended, and when that is ascertained it controls.* * * *'"

Vol. II Lewis' Sutherland Statutory Construction, 2nd Ed. Sec. 347.

> "In United States v. Minn., 3 Sumn. 209, 211, Fed. Case No. 16,740, Mr. Justice Story said that the proper course is 'to search out and follow the true intent of the legislature, and to adopt that sense of the words which harmonize best with the context, and promotes in the fullest manner the apparent policy and objects of the legislature'. To the same effect are United States v. Morris, 14 Pet. 464, 10 L. Ed. 543; American Fur. Co. v. United States, 2 Pet. 358, 367, 7 L. Ed. 450, 453; United States v. Lacher, 134 U. S. 624, 628, 33 L. Ed. 1080, 1083, 10 Sup. Ct. Rep. 625; Sedgw. Stat. & Const. Law, 2nd Ed. 282; Maxwell, Interpretation of Statutes, 2nd Ed. 318."
>
> U. S. v. Bitty, 208 U. S. 393.

Reverting to the case at bar.

What was the intent of Congress in enacting "The White-slave traffic Act"? From what sources do we, or can we, ascertain such intent?

(1) The congressional intent is expressed in the title:

> "An Act to further regulate interstate and foreign *commerce* * * *."

(2) The congressional intent is expressed in Section 6 of the Act:

> "And in pursuance of and for the purpose of carrying out the terms of the agreement or project of arrangement for the *suppression of the white-slave traffic,* adopted July twenty-fifth, nineteen hundred and two, for submission to their respective governments by the delegates of various powers represented at the Paris Conference and confirmed by a formal agreement signed at Paris on May eight-

eenth, nineteen hundred and four, and adhered to by the United States on June sixth, nineteen hundred and eight, as shown by the proclamation of the President of the United States, dated June fifteenth, nineteen hundred and eight, * * * .''

(3) The congressional intent is expressed in Section 7 of the Act, wherein it is provided that a corporation, company, society or association may be guilty of a violation of the provisions of the Act, and this rule of construction is prescribed:

> ''The word 'person', as used in this Act, shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person, acting for or employed by any other person or by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such other person, or of such company, corporation, society, or association, as well as that of the person himself.''

(4) The congressional intent is expressed in Section 8 of the Act wherein it defines and entitles the Act as the

> ''White-slave traffic Act.''
>
> ''White-slave, a girl *sold into captivity* for immoral purposes.''
>
> Standard Dictionary, supra.
>
> Holy Trinity Church v. U. S., 143 U. S. 457; 36 L. Ed. 226.

(5) The congressional intent is expressed in the caption of the President's Proclamation, referred to in Section 6 of the Act (35 Stat. at Large, pt. 2, p. 1979):

> "Agreement between the United States and other Powers for the *repression of the trade in white women.* Signed at Paris, May 18, 1904; ratification advised by Senate, March 1, 1905; adhered to by the President, June 6, 1908; proclaimed June 15, 1908."

(6) Also in the first paragraph of the Proclamation:

> "Whereas a project of arrangement for the *suppression of the white slave traffic* was, on July 25, 1902, adopted for submission to their respective Governments by the delegates of various Powers represented at the Paris Conference for the *repression of the trade in white women.*"

(7) Also in the preamble of the International Agreement, referred to and made a part of the President's Proclamation (35 St. at Lg., pt. 2, pp. 1980-1984):

> "His Majesty the German Emperor, * * *, being desirous to assure to women who have attained their majority and are subjected to deception or constraint, as well as to minor women and girls, an efficacious protection against the *criminal traffic* known under the name of *trade in white women* ('Traite des blanches'), have resolved to conclude an arrangement with a view to concert proper measures to attain this purpose * * *."

(8) Also in Article 6 of the Agreement, which recites:

"The contracting Governments agree, within the limits of the laws, to exercise, as far as possible, a supervision over the bureaus or agencies which occupy themselves with finding places for women or girls in foreign countries."

(9) Further, in the action of the Senate upon the Agreement (Vol. 39 Cong. Rec., pt. 4, p. 3770):

"Repression of the *trade in white women.*

"The injunction of secrecy was removed March 1, 1905, from projects of a convention and an additional arrangement adopted on July 25, 1902, by the delegates of the various Powers represented at the Paris conference for the repression of the *trade in white women (traite des blanches).*"

In these several documents it will be seen that the terms "*trade* in white women" and "White slave traffic" are used interchangeably, and the words "trade" and "traffic" as being synonymous.

A few definitions may aid in bearing out our contention. They are quoted from The Century Dictionary (N. Y. 1913):

"*Slave*"—"A person who is the chattel or property of another and is wholly subject to his will; a bond-servant; a serf."

"Slave-trade"—"The trade or business of procuring human beings by capture or purchase, transporting them to some distant country, and selling them as slaves; traffic in slaves."

"Trade"—"8. The exchange of commodities for other commodities or for money; the business of buying or selling; dealing by way of sale or exchange; commerce; traffic."

"Traffic"—"1. An interchange of goods, merchandise, or other property of any kind between countries, communities or individuals; trade; commerce."

(10) The congressional intent is disclosed by the history of the Act, the debates in Congress and the reports of committees.

Holy Trinity Church v. U. S., 143 U. S. 457; 36 L. Ed. 226.

(11) The congressional intent is shown by the contemporaneous construction given the Act by the executive departments of the Government.

U. S. v. Ala. R. R. Co., 142 U. S. 621;

U. S. v. Finnell, 185 U. S. 236, *244*; 46 L. Ed. 890;

New York v. New York City R. R. Co., 193 N. W. 543, 86 N. E. 565.

It is hardly necessary, however, to go outside the Act to ascertain the intention of Congress to suppress the White-slave traffic,—the abominable practice of enticing, coercing, buying and otherwise procuring girls to be enslaved in prostitution, debauchery and other immoral practices for the profit and gain of their masters—white slavers. It is not necessary to refer to the newspaper, magazine or platform demand for legislative action prior to and contemporaneous with the passage of the Act.

Could any other intent be deduced? If there can, let counsel for the United States point it out.

Having thus ascertained the "true intent of the legislature", to use Mr. Justice Story's language, *supra,* "we must adopt that sense of the words which harmonize best with the context and promotes in the fullest manner the apparent policy and objects of the legislature".

Applying this rule to Sections 2, 3 and 4 of the Act, it will be seen, at a glance, that they *solely* refer to any *"person"*. But, by Section 7 of the Act, the word "person" is made to include a "corporation, company, society, or association", engaged in the interstate traffic in *white-slaves* or women to be used for immoral practices. It will not be seriously claimed that a "corporation, company, society, or association" is capable of sexual intercourse. Yet the use of the words "corporation, company, society, or association", shows that Congress had in mind the fact that a "corporation, company, society, or association" might engage, equally with a person, in the illicit business or commerce of bartering in girls and women for profit or gain.

We deem this conclusive.

A more appropriate title for the Act would, perhaps, have been, "An Act to further regulate interstate and foreign commerce by prohibiting therein the trade or traffic in white women to be used as slaves in commercialized vice".

None of the allegations of the first count of the indictment in the case at bar attempts to show the

plaintiff in error a "white-slaver". There is not a scintilla of the slightest commercialism in the case at bar. The whole theory of the case, from its inception, was based upon the erroneous conception that the Act covered all cases of immoral interstate conduct. The prosecution, as well as the Court, labored under this grossly erroneous interpretation of the Act. The erroneous conception, as we have before stated, consisted of the idea that it was an Act to regulate *transportation*—that the jurisdiction of the Court rested upon the right to regulate interstate *transportation,* instead of the right to regulate interstate *commerce.*

This leads to the construction to be placed upon the word "commerce" as used in the Federal Constitution.

We respectfully contend that the word "commerce", as employed by the framers of the Constitution, implies a means to a financial, pecuniary or other like remunerative end,—traffic or trade for emolument or compensation. That this meaning is basal. That we unconsciously imply such meaning whenever we employ the word.

Bearing this fundamental definition in mind, let us apply some elementary rules of construction and examine some of the leading cases which have construed this word in the Constitution.

> "48. It is *a cardinal rule* in the interpretation of constitutions that the instrument must be so construed *as to give effect to the intention of the people who adopted it.*"

"Where the meaning shown on the face of the words is definite and intelligible, the courts are not at liberty to look for another meaning, even though it would seem more probable or natural, but they must assume that the constitution means just what it says."

"3. A constitution should be construed with reference to, but not overruled by, the doctrines of the common law and the legislation previously existing in the state."

Black's Constitutional Law, 2nd Ed. Secs. 48-49.

"The court should put itself in the position of the legislature,—should stand, in contemplating the statute, where the maker of it stood—the better to discern the reason and scope of the provision. They who voted for the measure must have had in mind a meaning for the enacted words; and the meaning, thus perceived, must be given them by the Court. Thus, 'Time,—If the statute is old, or if it is modern, the court should transport itself back to the time when it was framed, consider the condition of things then existing, and give it the meanings which the language as then used, and the other considerations, require'."

Bishop on Stat. Crimes, 3rd Ed. Sec. 75.

"In a book not strictly of the legal class we read: 'No sentence or form of words can have more than one true sense'; and this only one we have to enquire for. This is the very basis of all interpretation. * * * Every man or body of persons, making use of words, does so in order to convey a certain meaning; and to find this precise meaning is the object of all interpretation. To have two meanings in view

is equivalent to having no meaning, and amounts to absurdity'."

Same, Sec. 94.

"Adopted from other state or country. * * * In the adjudications on this question, no nice distinctions have been drawn; but, in a general way, it is held that a word, phrase or statutory provision, adopted from the laws of another state, or from England, * * * will ordinarily receive the construction it had in the law whence it was taken."

"Constitution.—In pursuance of the presumed intend of the makers, a constitutional provision, adopted from another state after it had been judicially interpreted, will, in the absence of any contrary indication, retain the meaning thus previously ascertained."

Same, Sec. 97.

"Looking to the subject for the meaning, if a statute employs a word which, though not legal, is technical to its subject, we give it the technical sense,—not the general sense, not one technical to another subject,—unless something appears indicating a different intent of the legislature. Thus,—

"An act relating to commerce is interpreted by the vocabulary of merchants, not of mechanics."

Same, Sec. 99.

"Ordinarily the language is to be understood in its common signification; as, for instance, general terms are to receive their general, not restricted sense."

Same, Sec. 102.

"Our constitutions, being, like statutes, written instruments and laws, are, in the main, similarly interpreted."

Same, Sec. 92.

"Believing, as I do, that the success of free institutions depends on a rigid adherence to the fundamental law, I have never yielded to considerations of expediency in expounding it. There is always some plausible reason for the latitudinarian constructions which are resorted to for the purpose of acquiring power,—some evil to be avoided, or some good to be attained, by pushing the powers of the government beyond their legitimate boundary. It is by yielding to such influences that constitutions are gradually undermined, and finally overthrown. My rule has ever been to follow the fundamental law as it is written, regardless of consequences. If the law does not work well, the people can amend it; and inconveniences can be borne long enough to await that process. But if the legislature or the courts undertake to cure defects by forced and unnatural constructions, they inflict a wound upon the constitution which nothing can heal. One step taken by the legislature or the judiciary in enlarging the powers of the government opens the door for another, which will be sure to follow; and so the process goes on, until all respect for the fundamental law is lost, and the powers of the government are just what those in authority please to call them."

Oakley v. Aspinwall, (N. Y.) 3 Coms. 547, *568.*

Having these fundamental principles in mind, we will proceed to apply them to the word "commerce" as used in the Constitution.

Our first step will be to place ourselves in the constitutional convention—revert to Philadelphia, Pennsylvania, as of September 17, 1787,—the date of the adoption.

The next step will be to ascertain what that convention understood by the word "commerce" when the delegates caused it to be inserted into Subd. 3, Section 8, of Article 1 of our Federal Constitution.

As we have seen, resort may be had to prior laws—to the English common law—the law adopted by this country and so adopted at about that time. Therefore, the highest authority we could find to enlighten us upon the subject would be the definition given it by Blackstone himself. Sir William Blackstone completed his Commentaries in 1765, just twenty-two years prior to the drafting of our Constitution. No one will argue that any different meaning crept into the law during this interim. Blackstone's definition of both foreign and domestic commerce will be found on pages (original paging) 273 to 278, subdivision V. In part, it is as follows:

> "V. Another light in which the laws of England consider the King with regard to domestic concerns, is as the arbiter of commerce. By commerce, I at present mean domestic commerce only. It would lead me into too large a foreign trade, its privileges, regulations, and restrictions; and would be also quite beside the purpose of these commentaries, which are confined to the laws of England; whereas, no municipal laws can be sufficient to order and determine the very extensive and complicated

affairs of *traffic and merchandise;* neither can they have a proper authority for this purpose. For, as these are transactions carried on between subjects of independent states, the municipal laws of one will not be regarded by the other. For which reason the affairs of commerce are regulated by a law of their own, called *the law merchant* or *lex mercatoria,* which all nations agree in, and take notice of. And in particular it is held to be part of the law of England, which decides *the causes of merchants* by the general rules which obtain in all commercial countries; and that often, even in matters relating to *domestic trade,* as for instance, with regard to the drawing, the acceptance, and the transfer of inland bills of exchange.

"With us in England, the King's prerogative, so far as it relates to mere domestic commerce, will fall principally under the following articles:

"First the establishment of *public marts,* or places of *buying and selling,* such as *markets and fairs,* with the *tolls* thereunto belonging. These can only be set up by virtue of the King's grant, or by long and immemorial usage and prescription, which presupposes such a grant. The limitation of these *public resorts* to such time and such place as may be most convenient for the neighborhood, forms a *part of economics,* or domestic polity, which, considering the kingdom as a large family, and the King as the master of it, he clearly has a right to dispose and order as he pleases.

"Secondly, the regulation of weights and measures. These, for the advantage of the public, ought to be universally the same throughout the kingdom; being the general criterions which reduce all things to the same or an equivalent *value.* * * *"

> "Thirdly, as money is the *medium of commerce,* it is the King's prerogative, as the arbiter of domestic commerce, to give it authority to make it current. Money is a universal medium, or common standard, by comparison with which the *value of all merchandise* may be ascertained; or it is a sign which represents the respective *values of all commodities.*"

Chancellor Kent's commentaries (N. Y., Nov. 23rd, 1826) on the subject of commerce is also instructive.

> Commentaries on American Law, Vol. 1, pp. 32-34; 431-439.

Not only in these works, but in all definitions of the word found in the text books and reported cases, the fundamental conception of the word "commerce" will be found to include a transaction for a monetary or pecuniary gain. Of course, the word is broad and includes within its meaning any ancillary subject, such, for instance, as the federal government jurisdiction over navigable waters wholly within a state.

> (Act of Sept. 19, 1890.)

In other words, as we gather from Mr. Blackstone's definition, the first principle of the word in its, perhaps we might say, barbaric sense, is trade or barter. To this, the English law had included the subject of weights and measures and the coinage of money. Still other auxiliary subjects have also been construed as being included within the meaning of the word, but a close study of them all will disclose that the earliest conception of the

word is still retained,—commercial intercourse for gain.

Judge Russell, in U. S. v. Hoke, 187 Fed. 992, has cited a number of cases which construe this section of the Constitution.

The first subject commented upon is that the power to regulate commerce includes the power to regulate the transportaion of passengers. The jurisdiction of Congress to exercise this power in interstate travel, we do not question. We have no desire to quarrel with the United States Supreme Court regarding any of its decisions on this subject. We agree implicitly with that Court upon this subject. The common carrier of passengers is undeniably engaged in a commercial pursuit, the traffic for gain. The contract for carrying—evidenced by a ticket—is a commercial transaction and should be regulated by the state. The common carrier is engaged in a purely commercial enterprise and his business should be regulated. The passenger, as long as his contract of carriage is executory, is, to a more or less extent, subject to observe certain rules, regulations and laws which Congress directly, or through its agents, may impose. To this extent, therefore, Congress, under this constitutional power, regulates the passenger as well as the carrier. But this regulation of the passenger has its beginning and its end in the contract of carriage—the contract for gain entered into by the common carrier engaged in a commercial enterprise. For instance: Should Congress

pass a law, in furtherance of the public safety, forbidding passengers to stand upon the platform of a car while the train was in motion and prescribing a penalty to be imposed upon the passenger for its violation, it would be a constitutional law in interstate travel. Likewise, a federal interstate law forbidding expectorating on the floor or platform of an interstate train would be another instance.

But outside the scope of the contract of carriage the jurisdiction does not exist. For instance: Congress could not enact a law making it a federal offense for a person to purchase a ticket in one state, and, riding on a common carrier into another state, with malice aforethought for the express purpose of committing the crime of murder in such other state. In such case, the regulation would be the regulation of a criminal, not the regulation of a passenger.

The subject of the law would be the prevention of and punishment for a criminal offense. The fact that the defendant was an interstate passenger would be a mere incident. The intent of Congress, as expressed in such an Act, would be to prevent and punish for crime. In no sense, could it be construed as an Act to regulate interstate commerce. It would be an attempt to usurp a purely police power, which, under our laws, is vested exclusively in the several states. The same rule would apply were the wrong merely one of immorality. Suppose the Act one where Congress attempted to make it a federal offense for a man to travel from one

state into another to have sexual intercourse with a prostitute or to debauch a woman, or attend an extremely immoral exhibition. What would be the subject of such an Act? What would be the "legislative intent" as expressed in the Act? Purely an attempt on the part of Congress to suppress or regulate immoral acts and the contract of passage on the common carrier merely an incident in no manner connected with the wrong sought to be prohibited. No barter, trade or traffic for gain would be involved in the commission of the offense itself—no act of a commercial nature would enter into the wrong doing. Congress would, in such a case, be attempting to regulate morals—not interstate travel. Again, would it make it any more of a commercial transaction should the woman to be debauched go in company with the accused? The offense would be the same and the subject of the Act identical. As said by Mr. Justice Brewer in Keller v. U. S., 213 U. S. 138; 53 L. Ed. 737; 29 Sup. Ct. Rep. 470; 16 A. & E. Ann. Case, 1066, at page 149, a case decidedly in point here:

> "While the acts of Congress are to be liberally construed in order to enable it to carry into effect the powers conferred, it is equally true that prohibitions and limitations upon those powers should also be fairly and reasonably enforced."

That Congress has police power is not to be denied; but, as Mr. Black says:

> "It is true that Congress has no general power to make police regulations for the people

> of the United States, nor has it authority to interfere, in matters not committed to its exclusive jurisdiction, with the internal affairs of the states, under the pretense of police regulations."
>
> Black's Cons. Law, 3rd Ed. 391-2.

The same author further says (p. 435):

> "Yet a state has the same unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation, where that jurisdiction is not surrendered or restrained by the federal constitution, and 'all those powers which relate to merely municipal legislation, or what may perhaps more properly be called internal police, are not thus surrendered or restrained, and consequently in relation to these, the authority of a state is complete, unqualified, and exclusive.'
>
> "A deliberate purpose to place the state police power under federal control can hardly be attributed to the framers of the constitution."

See also:

> Freund Police Power, Sec. 65;
>
> Bishop on Stat. Crimes, 3rd Ed., Sec. 990;
>
> Tiedman's Lim. of Police Power, Sec. 201.

The subject of the act construed in the Rahrer case was intoxicating liquors—a commercial subject. (140 U. S. 545, 35 L. Ed. 572.)

The subject of the Addyston Pipe case was iron pipe—another commercial subject. (175 U. S. 211, 44 L. Ed. 136.)

The subject of the Popper case was the traffic in instruments intended to prevent conception—the

selling of a commercial article in interstate trade. (179 U. S. 305, 45 L. Ed. 203.)

The subject of the act construed in the Lottery cases is expressed in its title: "An act for the suppression of lottery traffic * * *." A trading in lottery tickets for gain—a pernicious commercial transaction. (188 U. S. 321, 47 L. Ed. 492.)

And so on with the others mentioned: The anti-trust act; the act prohibiting the interstate trading in misbranded or mislabeled dairy products; the pure food law; the act prohibiting interstate traffic in gold and silver branded "United States Assay". These are all laws regulating commercial transactions—traffic or trade for gain—or articles of commerce—merchandise.

And, so do we agree with Judge Russell where he says, on page 1004 of the Hoke case:

> "I might go ahead and mention numbers of instances where the regulatory power of Congress as contained in the Constitution has been invoked for prohibiting the transportation from place to place of certain articles, and the courts have well settled the proposition that the power of Congress to regulate the transportation of persons differs in no particular or degree from its power to regulate the transportation of property and things."

Provided, that such persons are transported in the sense of articles of commerce—subjects of remuneration to those dealing or trading in or with them—as the objects of financial or pecuniary profit to the one transporting them. In this connection

we do not mean the *common carrier,* but the *white-slaver.*

Otherwise, were the Act intended to "regulate the transportation of persons", then the common carrier corporation, through its agents, would be guilty of a violation of the Act should any such agent sell an interstate ticket to a woman whom such agent knew intended to engage in prostitution, debauchery or other immoral practice—which construction would be absurd.

This latter would be the *regulation of the passenger traffic;* while the former would be the *regulation of the white-slave traffic.*

It may be contended that as one meaning of the word "commerce" is "sexual intercourse", that that is sufficient to confer upon Congress jurisdiction to regulate such intercourse among the citizens of different states.

As we have seen, a word can have but one "true meaning"—and that controls.

The word "commerce" also means "a game of cards, played in various ways". But we do not expect counsel to insist that this would confer jurisdiction on Congress to regulate interstate poker, whist or five-hundred.

We do not think it necessary to argue that neither of these meanings, nor any other meaning than the one we have given, was intended by the framers of our Constitution.

Taking all the testimony and evidence submitted in the case at bar to the jury as true, all the acts, commissions and omissions of the defendant combined would merely show an act of immorality, insofar as the United States is concerned.

That the white-slave traffic is pernicious and should be stamped out, we agree. But that the Act covers mere interstate sexual intercourse immorality, we most emphatically deny. In this connection, we believe that we have conclusively shown that the view taken by the trial Court, of the object and scope of the Act, is unconstitutional. That the Act covers the subject *only* which it itself expressly says it covers—the *traffic or commercial dealing in women and girls as prostitutes or for debauchery, or any other immoral practices.* That had Congress intended that the Act should cover all interstate immoral acts, as the trial Court ruled throughout the trial and instructed the jury it did, in such a case the Act would be unconstitutional, such immoral conduct not amounting to an act of *commerce* within the meaning of the constitution.

Keller v. U. S., supra;
Ex parte Gouyet, 175 Fed. 230.

All the cases, in which the Act has been construed, have been cases within the object and scope of the statute as we have construed it. That being the case, none of them is in point here. As we have before said, we have no quarrel with any of the Courts which have heretofore held this law constitu-

tional as applied to the facts disclosed in the reported cases.

Take, for example, the case of Hoke et al. v. United States, 227 U. S. 308, 57 L. Ed. 523. It clearly appears that Effie Hoke kept a house of prostitution and that the trial Court "permitted the woman to testify as to the acts of Effie Hoke at her house at Beaumont, restraining the liberty of the women and coercing their stay with her". It also appeared that the women transported were prostitutes. As stated by the Supreme Court:

> "There was sufficient evidence, as the trial Court said, of the fact of the immorality of their lives, and explicitly ruled that they could be shown to be public prostitutes."

Furthermore, the indictment in the Hoke case charged that the transportation was "for the purpose of prostitution", whereas, in the case at bar, there is no such allegation or pretense. It is simply charged that Myrtle Kellett was transported for an immoral purpose, to wit: "that she should live and cohabit with him, the said defendant, in Portland, Oregon, as his concubine."

Next, take the case of Bennett v. United States, 227 U. S. p. 333, 57 L. Ed. 531. It appears that that, also, was a case involving the transportation of women for a commercial and immoral purpose, to wit, prostitution.

The same is true of the case of Harris v. United States, 227 U. S. p. 340, 57 L. Ed. 534. That, also, was a case of commercialized vice.

Next, considering the case of Athanasaw et al. v. United States, 227 U. S. p. 326, 57 L. Ed. 528; it also affirmatively appears that that was a case of commercialized vice. The facts, as stated by the Supreme Court of the United States, show that the girl, in that case, was 17 years old and was transported ostensibly to become a chorus girl at the Imperial Theatre, Tampa, Florida. The theatre was operated by the defendants, and their agent or booking representative at Atlanta had engaged her and furnished her transportation. She arrived at Tampa and met the defendant Athanasaw.

> "As to what then took place, the girl testified as follows: 'He showed me to my room and took the check to get my trunk. I went to sleep and slept until 2 o'clock in the afternoon. At that hour one of the girls woke me up to rehearse. I went down in the theatre, and stayed there about an hour, rehearsing, singing, and then went to lunch in the dining room. All of the girls were there and several boys. I had never had any stage experience. At lunch they were all smoking, cursing, and using such language I couldn't eat. After lunch I went to my room, and about 6 o'clock Louis Athanasaw, one of the defendants, came and said to me I would like it all right; that I was good looking and would make a hit, and not to let any of the boys fool me, and not to be any of the boys' girl; to be his. *He wanted me to be his girl;* to talk to the boys and make a hit, and *get all of the money I could out of them.* His room was next to mine, and he told me he was coming in my room that night and sleep with me; and he kissed and caressed me. He told me to dress for the show that night and come down to the boxes. I went into the box about 9 o'clock.

> About that time Louis Athanasaw's son knocked on my door and told me to come to the boxes. In the box where I went there were four boys; they were smoking, cursing, and drinking. I sat down and the boys asked me what was the matter; I looked scared. I told them I was ashamed of being in a place like that; and Arthur Schlemann, one of the boys said he would take me out. The others insisted on my staying, and *said I would like it when I got broke in.* I tried to go out with Schlemann, but a boy named Gilbert pulled me back, saying "Let that cheap guy alone". Schlemann said he would send a policeman, and in about fifteen minutes Mr. Thompson and Mr. Evans came in for me.' "

That, undoubtedly, was a case of commercialized vice or a "white-slave case", within the letter and spirit of the "White-slave traffic Act". The girl in that case was transported for "the purpose of debauchery", as the indictment there alleged. There was present the element of commercialism. She was to *"get all of the money I (she) could get out of them",* a clear case of commercialized vice.

How different are the facts alleged in the first count of the indictment in the case at bar!

Next, take the case of U. S. v. Bitty, 208 U. S. 393; 52 L. Ed. 543, and it will be found to be clearly distinguishable from the case at bar. The defendant, in that case, was convicted under an Act of Congress passed in the exercise of its jurisdiction with reference to *foreign immigration.* That jurisdiction is not founded upon the *commerce* clause of the Constitution, but "upon the inherent and in-

alienable right of every sovereign and independent nation to regulate immigration in furtherance of its safety, independence and welfare."

See note to Keller v. U. S., 16 A. & E. Ann. Cas. 1069.

Even Mr. Mann, the author of the "White-slave traffic Act", differentiates the case of U. S. v. Bitty and concedes that the facts disclosed in that case do not come within the purview of the "White-slave traffic Act". The report of the Committee on Interstate and Foreign Commerce, submitted by Mr. Mann, sets out:

> "SUPREME COURT DECISION CONSTRUING SECTION 3 OF THE ACT OF FEBRUARY 20, 1907.
>
> "Section 3 of the Act of February 20, 1907, has received the consideration of the Supreme Court in two cases.
>
> "In the first case, that of the United States v. John Bitty (208 U. S. 393), the Supreme Court held that a foreign woman being brought to the United States as the personal, private mistress of a man living here was being imported 'for other immoral purposes', and that, therefore, the importer was subject to the penalty of the statute and the woman to deportation.
>
> "THIS DECISION IS NOT PERTINENT TO THE PHASE OF THE SUBJECT UNDER DISCUSSION, AND IS MENTIONED ONLY IN PASSING." (Congressional Record, Vol. 50, p. 3369.)

Furthermore, the Congressional history of the Act, as disclosed by the report of the House Committee on Interstate and Foreign Commerce,

through Mr. Mann, the author of the "White-slave traffic Act," clearly discloses that the purpose and scope of the "White-slave traffic Act" was to affect cases of *commercialized vice only* and not mere voluntary sexual intercourse unaccompanied with any mercenary object or gain. The report declares, among other things:

> "POLICE POWERS OF THE STATES NOT INTERFERED WITH.
>
> It is not the purpose of the bill to interfere with or usurp in any way the police powers of the states. The bill reported does not endeavor to regulate, prohibit, or punish prostitution or the keeping of cases where prostitution is indulged in. The prohibition of prostitution and other immoral practices and the punishment of the practice of prostitution or the keeping of houses of ill fame, or other immoral places, in the several States, are matters wholly within the powers of the States and the Federal Government has no jurisdiction over those subjects. On the other hand, it has been shown in the investigation relating to the 'White-slave traffic' that persons engaged in that business in some of the large cities felt quite free to engage in the traffic as between the States, when they hesitated about engaging in the traffic wholly confined in one State.
>
> PROVISIONS OF THE BILL.
>
> Most of the provisions of the bill are based upon the power of Congress over interstate and foreign commerce."
>
> * * * * *
>
> "The sections above proposed have been so drawn that they are limited to cases in which there is the act of transportation in interstate commerce of women for purposes of prostitu-

tion. The use of interstate commerce in sending prostitutes from one State to another in connection with this traffic in women would seem to be as directly connected with interstate commerce as the sending of tickets from one State to another in furtherance of the operation of a lottery. It is true that the act of prostitution is not committed in connection with the interstate transportation nor was the drawing in connection with the lottery a part of interstate commerce."

* * * * *

"THE WHITE SLAVE TRADE.

A material portion of the legislation suggested and proposed is necessary to meet conditions which have arisen within the past few years. The legislation is needed to put a stop to a villainous interstate and international traffic in women and girls. The legislation is not needed or intended as an aid to the States in the exercise of their police powers in the suppression or regulation of immorality in general. *It does not attempt to regulate the practice of voluntary prostitution, but aims solely to prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution."* (Congressional Record, Vol. 50, pp. 3368, 3370.)

In addition to all of the reasons advanced by us, in support of the contention we make that the "White-slave traffic Act" was intended by Congress to apply only to cases of commercialized vice, we insert an official expression of the views of the Department of Justice of the United States, through its Attorney General, which has been called to our attention, as follows:

"DEPARTMENT OF JUSTICE
Office of United States Attorney
District of Minnesota.
St. Paul, July 17, 1912.

The Attorney General,
Washington, D. C.

Sir: I have to honor to submit for your direction and advice the facts in a case which is claimed to come within the purview of the Act of June 25, 1910, called the 'White-Slave Traffic Act'.

One Ada Cox, twenty-four years of age, residing at Chicago, Ill., came to St. Paul in October, 1910, at the solicitation and expense of one Rufus Edwards. On her arrival here, Edwards met her at the station. They passed the day riding, lunching and drinking, and the night followed at a house of assignation in the city of Minneapolis. She remained there three days with Edwards and then returned to Chicago. In June, 1911, she repeated this visit under like circumstances.

June 12, 1912, Miss Cox applied to me for a warrant of arrest of Edwards under the above named act. At that time she made a statement of her connection with Edwards which was taken in shorthand by Mr. J. M. Dickey, Assistant United States Attorney, in this office, and by him written out.

A copy of this statement is enclosed.

Careful consideration of the facts and circumstances as related by Miss Cox fail to convince me that her case came within the spirit and intent of the Mann act. *The element of traffic is entirely absent from this transaction.* It is not a case of prostitution or debauchery and the *general words 'or other immoral practice' should be qualified by the particular preceding words and be read in the light of the rule of Ejusdem Generis. This view of the statute is the more reasonable when considered*

in connection with Section 8 where Congress employs the terms 'slave' and 'traffic' as indicative of its purpose to suppress certain forms of abominable practice connected with the degradation of women for gain.

Since I have hesitated about having a warrant issued for the arrest of Edwards, Miss Cox has enlisted certain club women in her behalf who are insisting on the arrest being made.

As this case is typical of many others that are liable to be brought to this office I deemed it proper to submit the facts to ascertain if my interpretation of the statute is in harmony with the departmental construction.

Very respectfully yours,
(Signed) Chas. C. Houpt,
United States Attorney."

"DEPARTMENT OF JUSTICE,
Washington, D. C.
July 23, 1912.

United States Attorney,
St. Paul, Minn.

I have received your letter of the 17th instant concerning a statement of the facts with reference to the complaint of one Ada Cox, against one Rufus Edwards of an alleged violation of the White Slave Traffic Act.

I agree with your conclusion that the facts and circumstances set forth in your letter and its enclosure do not bring the matter within the true intent of the White Slave Traffic Act, and that no prosecution against Edwards should be instituted in the federal courts unless other and different facts are presented to you.

Respectfully,
(Signed) Geo. W. Wickersham,
Attorney General."

In addition to this expression of opinion, we respectfully refer to similar views in other in-

stances expressed by the Hon. Attorney General and to be found in Congressional Record, Vol. 50, pp. 3354 et seq., especially page *3366*.

It is a settled rule of statutory construction that where the language of a statute is ambiguous or otherwise doubtful, or, being plain, a literal construction could lead to such absurdity, hardship or injustice, as to render it irrational to impute to the law-making power a purpose to produce or permit such result, the contemporaneous construction given by an executive department of the Government is of value in endeavoring to ascertain the legislative intent.

Said the Supreme Court of the United States, in the case of U. S. v. Ala. R. R. Co., 142 U. S. *615-616*, *612;* 35 L. Ed. 1134 and 1136:

> "We think the contemporaneous construction thus given by the executive department of the Government * * * a construction which, though inconsistent with the literalism of the Act, certainly consorts with the equities of the case,—should be considered as decisive in this suit."

Said the Supreme Court of the United States in the case of U. S. v. Finnell, 185 U. S. 236, *244;* 46 L. Ed. 890, 893:

> "Of course, if the departmental construction of the statute in question were obviously or clearly wrong, it would be the duty of the court to so adjudge. * * * But if there simply be doubt as to the soundness of that construction * * * the action during many years of the department charged with the execution of

the statute should be respected, and not overruled except for cogent reasons."

In the case of New York v. New York City R. Co., 193 N. Y. 543; 86 N. E. 565, it was held that when the meaning is doubtful a practical construction by those for whom the law was enacted, or *by public officers whose duty it was to enforce it,* is entitled to *great influence,* but the ambiguity must not be captious, but should be so serious as to raise a reasonable doubt in a fair mind, reflecting honestly upon the subject.

See also, statement of the rule and cases collated in Vol. 36 Cyc., pp. 1139, 1142.

Another error committed by the trial Court in interpreting the "White-slave traffic Act", was in giving to the words, "debauchery, or for any other immoral purpose," a much broader meaning than was the intent of Congress in enacting that law. The trial Judge construed these words as comprehending *any* act of sexual intercourse, even though it was voluntary and absolutely free from any element of commercialism or mercenary gain or profit.

We admit that whatever of doubt or ambiguity there is in the "White-slave traffic Act" arises from the words "debauchery, *or for any other immoral purpose*". If given the broad and comprehensive meaning accorded to them by the trial Judge in the case at bar, we respectfully contend that they subvert the intent and purpose of the "White-slave

traffic Act'' and give the Act a much broader scope and operation than was intended by Congress. If given the less broad interpretation, for which we contend, these words are then given their proper meaning, one which accords with the intent and purpose of Congress in passing the law.

We have seen, from other rules or canons of construction and interpretation, that it was, clearly, the intent of Congress that the highly penal provisions of the "White-slave traffic Act" should apply *only* to cases of *commercialized vice.* This view is further confirmed by taking into consideration the use of the words, "debauchery, or for any other *immoral purpose''.* We submit that the trial Judge was not justified in treating those words as applicable to *any* act of voluntary sexual intercourse absolutely free from any element of commercialism or mercenary gain or profit, such as is disclosed by the facts in the case at bar. The "White-slave traffic Act'' makes use of the words, "prostitution or debauchery, or for any other immoral *purpose'',* and again in the same section, "to become a prostitute or to give herself up to debauchery, or to engage in any other immoral *practice''.* It will be observed that the words "purpose'' and "practice'' are used interchangeably in the several sections, evidently having in mind various other and baser forms of immorality practiced for commercial gain by women and girls. A perusal of the "White-slave traffic Act'' discloses that in Section 2 the words "purpose'' and "practice''

are used alternately and twice in that section. In Section 3 they are used once alternately. In Section 4 the word "practice" seems to be substituted for the word "purpose" in the expression "any other immoral purpose". In Section 6 neither of the expressions "any other immoral purpose" or "any other immoral practice" seems to be used in the first paragraph of this section. A reference is simply made to "the transportation in foreign commerce of alien women and girls for purposes of *prostitution* and *debauchery*". In the second paragraph of Section 6, however, will be found the expression, twice repeated, "any other immoral purpose".

Obviously, the word "practice", used generally throughout the Act interchangeably with the word "purpose", imports something more than a single act of sexual intercourse without a commercial design or purpose. "Practice", as defined by the lexicographers, signifies, inter alia, some act or function that we exercise or pursue as an occupation; as, to practice law. (Cent. Dic., Vol. 6, p. 4665.) The word should, therefore, be given this expressive meaning in order to correspond with the evils sought to be eliminated by the passing of the law, and, thus construed, *the vindicatory* part of the law has application only to those who attempt to exercise or follow acts of immorality as a vocation.

"Prostitution", of course, refers to commercialized vice. The words following it, "debauchery,

or for any other immoral practice (purpose),'' under the rule of construction known as ''ejusdem generis'', where general words follow the enumeration of particular classes of persons or things, will be construed as applicable only to persons or things of the same general nature or class as those enumerated.

Cyc., Vol. 36, pp. 1119, 1122, and case there collated.

This rule is especially applicable to statutes defining crimes and regulating their punishment.

State v. Erwin, 91 N. C. 545;
Lane v. State, 39 Ohio St. 312;
Ex. p. Muckenfuss, 52 Tex. Cr. 467; 107 S. W. 1131;
State v. Goodrich, 84 Wis. 359; 54 N. W. 577;
Reg. v. Reid, 30 Ont. 732.

Under this rule of construction, the words ''or debauchery, or for any other immoral *purpose'',* and again the words ''or to give herself up to debauchery, or to engage in any other immoral *practice'',* undoubtedly should be construed as applicable only to ''prostitution'', or, in other words, as applicable *only* to *commercialized vice.* The obtaining, furnishing, or bartering in young girls for the purpose of *''debauchery'',* by which we understand that expression to mean the pollution or ruining of young girls, is a species of traffic in young girls and women just as much as the obtaining, furnishing or bartering of more seasoned girls and women for the purposes of prostitution. The

further expressions "other immoral *purpose*" and other immoral *practice*", are undoubtedly used in the same connection and refer to immoral practices too revolting to discuss, to which young girls and women may be subjected, or which they may "practice" for profit or gain.

Likewise, "in accordance with the maxim '*noscitur a sociis*', the meaning of a word used in a statute must be construed in connection with the words with which it is associated. Where several words are connected by a copulative conjunction, they are presumed to be of the same class, unless a contrary intention appears".

See statement of this rule of construction in Vol. 36, of Cyc., pp. 1118, 1119, and cases there collated.

It is a well known fact that there is a radical difference of opinion between federal Judges, expressed in the trial of cases brought under the "White-slave traffic Act" as to the proper scope and operation of that Act. Some federal Judges, as did the trial Judge in the case at bar, have held that any act of sexual immorality, even though free from any element of commercialism or profit or gain to the person furnishing the transportation, is within the intent and purpose of the Act; while others have held, in accord with the construction we maintain, that the scope and operation of the Act is limited to cases of commercialized vice only. Among the latter Judges, we beg to refer to District Judge Pollock, of Kansas, whose charge to the

jury in a case brought under the "White-slave traffic Act" we incorporate in this opening brief, as a part of our argument. This charge is as follows:*

"In The
District Court of The United States
for the
District of Kansas
Second Division

CHARGE TO JURY BY HON. JOHN C. POLLOCK IN UNITED STATES VS. LEE BAKER SEPTEMBER 23, 1913.

Gentlemen of the jury, you have now listened with care to the trial of this case up to this point when it becomes my duty under the law to charge you as to the law which shall govern you in your deliberations on a verdict in this case. You understand, gentlemen of the jury, in courts of justice where cases are tried before the court and a jury, the responsibility is evenly divided between the court and the jury. The duty of the court under our form of laws is to declare the law of the case, and it is the duty of the jury to take the law precisely as declared by the court, for, if there be any mistake made in a matter of law, it is the mistake of the court and the court is responsible for such mistake. On the other hand, it is the duty of the jury to determine the facts from the evidence, and if a mistake be made in that matter it is a mistake of the jury and not of the court. The jury must trust the court implicitly to correctly declare the law, and the court must trust the jury to correctly find the facts in a given case from the

* Note.—This charge was reported by S. A. Buckland, an attorney at law at Wichita, Kansas, and was printed in pamphlet form by that gentleman after its revision by Judge Pollock, and we have inserted the entire charge from a printed copy.

evidence which is offered and received on a trial of the case before the jury; and if the jury unite the true facts of the case to the law as declared by the court in the verdict returned —whenever that is done, justice in our courts is properly administered; whenever it is not done for any reason, then justice is not properly administered.

Now then gentlemen of the jury I shall endeavor to state to you what it is that we are trying in this case today. In this case Lee Baker was presented to the Grand Jury and the Grand Jury returned an indictment against him in two counts under what is commonly known as the Mann Act or White Slave Law that was some time since passed by our Congress. I shall read that law to you in a moment that you may become familiar with its terms. You understand, gentlemen of the jury, in a general way, in framing this Government of ours, the States that were then in existence for themselves, and for all other States that should be created thereafter, framed what we call a Federal Constitution, and that the Federal Constitution and the laws of Congress which are enacted in pursuance of our Constitution are the supreme law of this country. It is binding upon the States just as well as upon the individuals. In doing that, as I have said, the States that were then in existence, and each State that has come into existence since, has agreed the Constitution and the laws of Congress enacted in pursuance of that Constitution shall be the supreme law of this country. That is the reason that Congress takes control of certain matters which are regulated by Federal law. The States were absolutely incompetent to regulate commerce between the different States, so they committed that matter to Congress, and the Congress of the United States under the Federal Constitution declares all laws

and rules which relate to commerce between the several States, among the several States and with foreign countries. Now what is known as the 'White Slave Law' was enacted by Congress under what is known as the commerce clause of the Constitution; that is, it relates entirely to commerce between the different States of this country. Now you know in a general way there are certain matters that the State alone has power to deal with and the Federal Government has no power to deal with. Our States regulate our laws as to marriage and divorce. Our States define in their statutes what is adultery, what is bigamy, what is fornication; all these are matters over which Congress has no control and no concern whatever. It is absolutely impossible in a government situated as is ours for the Federal Government to have any thing to say as to how people shall be married, and who are properly married and divorced. It is just as impossible under our form of government for the United States to define the crime of adultery where committed within the borders of a State. It is for the States to punish for that matter, but it is within the power of Congress to regulate and control interstate commerce, that is, commerce from one State to another.

There are two counts in this indictment based on two distinct offenses which are prescribed by the law, and I will read the law and refer to the indictment. (Reads Section.) (2) Section 2 of the act on which is based the first count of this indictment reads as follows: (Reads Section 2.) As I have said to you, the first count of this indictment is based upon the section that I have read; that count reads as follows: * * * present Lee Baker on or about the 28th day of June, 1912, in said District and within the jurisdiction of said Court at the City of Peabody, then and there being

did unlawfully, knowingly and feloniously transport or cause to be transported from the City of Peabody in the State of Kansas to the City of St. Joseph in the State of Missouri, one Cora Slover, then and there being a woman under the age of eighteen years for the purpose of prostitution or other immoral practices, the exact nature and character of said prostitution or other immoral practices being to the Grand Jury unknown, he the said Baker furnishing railroad transportation over the Chicago, Rock Island & Pacific Railway from the City of Peabody in the State of Kansas to the City of St. Joseph in the State of Missouri.

Now, gentlemen, this act has not only been held constitutional by the Supreme Court of our country, but the Congress had the undoubted power to enact it for the purpose of regulating and keeping clean commerce between the States under the commerce clause of our national Constitution. The object and purpose of Congress in the passage of this act was to break up the practice of those engaged in procuring women or girls in one State of our country and transporting or assisting in transporting them into another State to then become inmates of a house of prostitution, or to prostitute their persons in promiscuous sexual intercourse; in other words, to become or engage in the business of a prostitute; again, to prevent any one from transporting or assisting in transporting from one State into another State or Territory of our country any woman or girl under any guise, arrangement or device whatever for the purpose of there debauching or causing such woman or girl to be debauched by sexual intercourse, or other immoral practices which will cause her to live in a state of debauchery; or, to prevent any one from transporting, or assisting in transport-

ing any woman or girl in such interstate commerce from one state to another for any such immoral purpose as will or may lead her into a life of prostitution or debauchery.

This is a criminal prosecution by indictment, hence it devolves upon the government to make out the case charged in this indictment before you can convict, beyond a reasonable doubt. By that term, reasonable doubt, is meant exactly what it says; a reasonable doubt; such a doubt as will cause a thinking, prudent, reasonable man to hesitate before engaging in the graver or more important affairs of life. When any of the jury have in their minds an abiding conviction the defendant must be guilty as charged,—when they have reached that state of mind—they no longer have any reasonable doubt. The defendant in this case admits he did take this girl Cora Slover at about the time charged from Peabody to St. Joseph in the State of Missouri; that is to say, that he did travel in interstate commerce. He says he was going to the city of St. Joe for the purpose of getting business in his occupation; that the girl went with him and that it was not his intention when he furnished this transportation, when he engaged in this interstate commerce with the girl that she should engage in prostitution or debauchery, but that they were engaged to be married and expected to be married. He travelled with her to St. Joseph and that they there lived together. *If what the defendant says in that relation is true he is not guilty under this law, because at the time this transportation was entered upon and carried out in this State he must have knowingly furnished this transportation to this girl knowing or intending that she should become a prostitute or should engage in debauchery or such other immoral sexual practice.* Now it is the contention of

the Government, and this evidence was offered to show with what mind the defendant furnished this transportation, that this defendant did at St. Joseph, Missouri, request and endeavor to induce others to engage in sexual intercourse with this woman, who is now under this testimony, his wife. Now that was offered for the purpose of showing what his mind was at the time he furnished this transportation, the intent. If he was furnishing this transportation with the intent that she should enter a house of prostitution, or should help him in any way by selling her body, to help him along, then he is guilty under this law. *If, on the contrary, he was going to St. Joseph for the purpose of looking for a position where he could ply his business and that was his honest intent, and the girl wanted to go along, as she says she did, and it was not his intent that she should engage in prostitution, debauchery or immoral practices, then he is not guilty.* The burden of proving this charge beyond a reasonable doubt is on the Government.

There is another section of this statute which I shall read and under the evidence in this case I find but little or any reason for submitting it. The third section reads: (Reading same.) That section of the statute is meant to cover cases when one entices another to travel in interstate commerce or does things inducing them for the purpose of having them engage themselves in prostitution or in such immoral practices or debauchery as will lead to sexual immorality and eventually to prostitution, but in this case, under the evidence, there is no evidence that he did induce her to go with him. *The evidence is that she was really the one who wanted to go with the defendant;* so then as far as the second count of the indictment is concerned there is no evidence of inducing her to accompany him. *She says she wanted to go*

and no one induced her to accompany him. She had no place to stay and wanted to go with him; so the question after all in this case is with what purpose did the defendant furnish this transportation to this girl Cora Slover at the time it was furnished, and what was his intention in that matter at the time that he engaged in this interstate commerce. If he knowingly furnished her transportation and took this girl with him to St. Joseph for the purpose of prostitution on the part of the girl, or that she should there become through himself and others so debauched that she necessarily would become a prostitute, then the defendant is guilty and you will so find; *believing the contrary, the Government has failed to convince you that is true as charged in this indictment, then you will find him not guilty.* Again, *suppose these folks were engaged to be married; suppose he was going to St. Joseph with the legitimate purpose of engaging there in business; suppose this girl wanted to accompany him; if at the time they travelled from Peabody to St. Joseph and his motives were honest and his intentions toward the girl good; and if he did not intend that she should engage in prostitution or debauchery or other immoral acts after they got there; if that was the intention in his mind at the time he travelled; and after they got there they lived together as man and wife, that was a question for the State authorities of Missouri, and not for the Federal Government, because, as I have said, what constitutes adultery, what constitutes bigamy, and what constitutes living in a state of fornication, all those questions are matters for the State. So what did this man intend? That is the question for your determination.* Now, gentlemen, I have said, you are the exclusive judges of the credibility of the witnesses, the weight of the evidence and the facts as proved. Take

this case and consider it as far as the law is concerned as I have charged you.

There is another section that doubles the punishment in case the girl furnished the transportation, as in section two, or, is induced to go, as under section three, is under eighteen years. The evidence is, I believe, that the girl at the time this transportation was furnished was under eighteen, but the punishment is left, if you find the defendant guilty, with the discretion of the court between certain extremes.

You will now retire to your jury room and consider the case. I have caused four forms of verdict to be prepared; one relating to each of the two counts of the indictment, one finding the defendant guilty on the first count of the indictment, if you so find; one finding him not guilty on that count, if you so find; also, two forms of verdict relating to the second count in the same manner, and I send the indictment and these four forms of verdict with you."

Finally, in urging upon the Court the contention, made by us throughout the entire trial of the case in the Court below, that the "White-slave traffic Act", in its intent, scope and operation, was intended by Congress to apply to cases *only* of *commercialized vice,* we remind this Court that the "White-slave traffic Act" is a highly penal statute and that it should be strictly construed, and that, if there be any doubt and ambiguity in some of the verbiage of the Act, that doubt or ambiguity should be resolved against the Government and in favor of the individual. As was well said in the case of Hackfeld v. U. S., 197 U. S. 442:

"This is a highly penal statute and we think the well known rule as laid down by Chief

> Justice Marshall in U. S. v. Wiltberger, 5 Wheat. 76, 95: 'The rule that penal statutes are to be strictly construed is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of the individual.' "

In concluding our argument on this phase of the case, we respectfully submit that the facts alleged in the first count of the indictment, assuming them to be true, do not bring the plaintiff in error within the scope and operation of the "White-slave traffic Act" and that a reversal must follow and the plaintiff in error be discharged and permitted to go hence without day.

Dated, San Francisco,
March 2, 1915.

Respectfully submitted,

FRANK MCGOWAN,
MARSHALL B. WOODWORTH,
Attorneys for Plaintiff in Error.